

REPATRIATION TAX AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions relating to payment of corporate income tax on deferred foreign income.

Highlighted Provisions:

This bill:

- ▶ adds deferred foreign income to the definition of unadjusted income for corporate income tax purposes;
- ▶ modifies an uncoded effective date; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2011, Chapter 69

Uncodified Material Affected:

AMENDS UNCODIFIED MATERIAL:

Uncodified Section 5, Laws of Utah 2018, Chapter 405

This uncodified section affects Sections 59-2-1208, 59-7-118, 59-10-136, and 59-12-1209.

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-101** is amended to read:

59-7-101. Definitions.

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" ~~[is as]~~ means the same as that term is defined in Section 59-7-302.

(6) (a) "Captive real estate investment trust" means a real estate investment trust if:

(i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and

(ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:

(A) owned by a controlling entity of the real estate investment trust; or

(B) controlled by a controlling entity of the real estate investment trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(8) (a) "Controlling entity of a captive real estate investment trust" means an entity that:

(i) is treated as an association taxable as a corporation under the Internal Revenue Code;

(ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue Code; and

(iii) directly, indirectly, or constructively holds more than 50% of:

(A) the voting power of a captive real estate investment trust; or

(B) the value of the shares or beneficial interests of a captive real estate investment trust.

(b) "Controlling entity of a captive real estate investment trust" does not include:

(i) a real estate investment trust, except for a captive real estate investment trust;

(ii) a qualified real estate investment subsidiary described in Section 856(i), Internal Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real estate investment trust; or

(iii) a foreign real estate investment trust.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(9) "Corporate return" or "return" includes a combined report.

(10) "Corporation" includes:

(a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and

(b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.

(11) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

(12) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state.

(b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

(i) the right to do business through incorporation or qualification;

(ii) the owning, renting, or leasing of real or personal property within this state; and

(iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

(13) "Domestic corporation" means a corporation that is incorporated or organized under the laws of this state.

(14) (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

(i) (A) an association, corporation, or other organization of~~[-(F)]~~ farmers~~[-]~~ or ~~[(H)]~~ fruit growers; or

(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A); and

(ii) organized and operated on a cooperative basis to:

(A) (I) market the products of members of the cooperative or the products of other producers; and

(II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a member or producer or the value of the products of a member or producer; or

(B) (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and

(II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:

(A) the terms ~~["member"]~~ and ~~["producer"]~~; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A).

(ii) The rules made under this Subsection (14)(b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

(15) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(16) (a) "Foreign operating company" means a corporation ~~if~~ that:

(i) ~~the corporation~~ is incorporated in the United States;

(ii) conducts at least 80% of the corporation's business activity, as determined under Section 59-7-401, ~~is conducted~~ outside the United States; and

(iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions, ~~the corporation~~ has:

(A) at least \$1,000,000 of payroll located outside the United States; and

(B) at least \$2,000,000 of property located outside the United States.

(b) "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

(17) (a) "Foreign real estate investment trust" means:

(i) a business entity organized outside the laws of the United States if:

(A) at least 75% of the business entity's total asset value at the close of the business entity's taxable year is represented by:

(I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

(II) cash or cash equivalents; or

(III) one or more securities issued or guaranteed by the United States;

(B) the business entity is:

(I) not subject to income taxation:

- 157 (Aa) on amounts distributed to the business entity's beneficial owners; and
158 (Bb) in the jurisdiction in which the business entity is organized; or
159 (II) exempt from income taxation on an entity level in the jurisdiction in which the
160 business entity is organized;
- 161 (C) the business entity distributes at least 85% of the business entity's taxable income,
162 as computed in the jurisdiction in which the business entity is organized, to the holders of the
163 business entity's:
- 164 (I) shares or beneficial interests; and
165 (II) on an annual basis;
- 166 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
167 by a single person:
- 168 (Aa) the voting power of the business entity; or
169 (Bb) the value of the shares or beneficial interests of the business entity; or
170 (II) the shares of the business entity are regularly traded on an established securities
171 market; and
- 172 (E) the business entity is organized in a country that has a tax treaty with the United
173 States; or
- 174 (ii) a listed Australian property trust.
- 175 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
176 commission may make rules defining:
- 177 (i) "cash or cash equivalents";
178 (ii) "established securities market"; or
179 (iii) "listed Australian property trust."
- 180 (18) "Income" includes losses.
- 181 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
182 during the year in which Utah taxable income is determined.
- 183 (20) "Nonbusiness income" ~~[is as]~~ means the same as that term is defined in Section
184 59-7-302.
- 185 (21) "Real estate investment trust" ~~[is as]~~ means the same as that term is defined in
186 Section 856, Internal Revenue Code.
- 187 (22) "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income ~~[which]~~ that bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (22), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

~~[(24)]~~ (23) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.

~~[(23)]~~ (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

(25) "State of the United States" includes any of the 50 states or the District of Columbia.

(26) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

(27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(28) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(29) (a) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(b) "Unadjusted income" includes deferred foreign income described in Section 965(a), Internal Revenue Code.

(30) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:

- 219 (A) centralized management;
220 (B) functional integration; and
221 (C) economies of scale.
- 222 (b) "Unitary group" includes a captive real estate investment trust.
223 (c) "Unitary group" does not include an S corporation.
- 224 (31) "United States" includes the 50 states and the District of Columbia.
225 (32) "Utah net loss" means the current year Utah taxable income before Utah net loss
226 deduction, if determined to be less than zero.
- 227 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable
228 years that may be carried back or carried forward to the current taxable year in accordance with
229 Section 59-7-110.
- 230 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction
231 less Utah net loss deduction.
- 232 (b) "Utah taxable income" includes income from tangible or intangible property located
233 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
234 commerce.
- 235 (35) "Utah taxable income before net loss deduction" means apportioned income plus
236 nonbusiness income allocable to Utah net of related expenses.
- 237 (36) (a) "Water's edge combined report" means a report combining the income and
238 activities of:
- 239 (i) all members of a unitary group that are:
- 240 (A) corporations organized or incorporated in the United States, including those
241 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
242 936, Internal Revenue Code, in accordance with Subsection (36)(b); and
- 243 (B) corporations organized or incorporated outside of the United States meeting the
244 threshold level of business activity; and
- 245 (ii) an affiliated group electing to file a water's edge combined report under Subsection
246 59-7-402(2).
- 247 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
248 Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a
249 unitary group.

(37) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

Section 2. **Uncodified Section 5, Laws of Utah 2018, Chapter 405, Retrospective operation**, is amended to read:

(1) Except as provided in ~~[Subsection (2)]~~ Subsections (2) and (3), this bill has retrospective operation ~~[beginning on January 1, 2018]~~ for a taxable year beginning on or after January 1, 2017.

(2) The amendments to Sections 59-2-1208 and 59-2-1209 have retrospective operation to January 1, 2018.

~~[(2)]~~ (3) The amendments to ~~[Sections 59-7-118 and]~~ Section 59-10-136 have retrospective operation for a taxable year beginning on or after January 1, 2018.

Section 3. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 4. **Retrospective operation.**

This bill has retrospective operation for a taxable year beginning on or after January 1, 2017.